



February 25, 2005

SENATE BILL No. 124

DIGEST OF SB 124 (Updated February 22, 2005 1:24 pm - DI 106)

Citations Affected: IC 35-50.

Synopsis: Credit time for pretrial home detention. Permits a person serving pretrial home detention to earn credit time in credit class II. Makes conforming amendments.

Effective: July 1, 2005.

Paul

January 4, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 24, 2005, amended, reported favorably — Do Pass.

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SB 124—LS 6445/DI 106+



February 25, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 124

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-50-6-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person
3 imprisoned for a crime or imprisoned awaiting trial or sentencing is
4 initially assigned to Class I.

5 (b) A person may be reassigned to Class II or Class III if ~~he~~ **the**
6 **person** violates any of the following:

7 (1) A rule of the department of correction.

8 (2) A rule of the penal facility in which ~~he~~ **the person** is
9 imprisoned.

10 (3) A rule or condition of a community transition program.

11 However, a violation of a condition of parole or probation may not be
12 the basis for reassignment. Before a person may be reassigned to a
13 lower credit time class, ~~he~~ **the person** must be granted a hearing to
14 determine ~~his~~ **the person's** guilt or innocence and, if found guilty, whether
15 reassignment is an appropriate disciplinary action for the violation. The
16 person may waive ~~his~~ **the person's** right to the hearing.

17 (c) **A person on home detention awaiting trial or sentencing may**

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only be assigned to Class II. However, a court may revoke the placement of a person on home detention who violates a condition of home detention.

(d) In connection with the hearing granted under subsection (b), the person is entitled to:

- (1) have not less than twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct and the rule the misconduct is alleged to have violated;
- (2) have reasonable time to prepare for the hearing;
- (3) have an impartial decisionmaker;
- (4) appear and speak in his the person's own behalf;
- (5) call witnesses and present evidence;
- (6) confront and cross-examine each witness, unless the hearing authority finds that to do so would subject a witness to a substantial risk of harm;
- (7) have the assistance of a lay advocate (the department may require that the advocate be an employee of, or a fellow prisoner in, the same facility or program);
- (8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;
- (9) have immunity if his the testimony or any evidence derived from his the testimony is used in any criminal proceedings; and
- (10) have his the record expunged of any reference to the charge if he the person is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

(e) Except as provided in subsection (c), a person may be reassigned from Class III to Class I or Class II or from Class II to Class I. A person's assignment to Class III or Class II shall be reviewed at least once every six (6) months to determine if he the person should be reassigned to a higher credit time class.

SECTION 2. IC 35-50-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) This section does not apply to a person on home detention awaiting trial or sentencing.

(b) A person may, with respect to the same transaction, be deprived of any part of the credit time he the person has earned for any of the following:

- (1) A violation of one (1) or more rules of the department of correction.

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(2) If the person is not committed to the department, a violation of one (1) or more rules of the penal facility in which the person is imprisoned.

(3) A violation of one (1) or more rules or conditions of a community transition program.

(4) If a court determines that a civil claim brought by the person in a state or an administrative court is frivolous, unreasonable, or groundless.

However, the violation of a condition of parole or probation may not be the basis for deprivation. Whenever a person is deprived of credit time, ~~he~~ **the person** may also be reassigned to Class II or Class III.

~~(b)~~ **(c)** Before a person may be deprived of earned credit time, the person must be granted a hearing to determine ~~his~~ guilt or innocence and, if found guilty, whether deprivation of earned credit time is an appropriate disciplinary action for the violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in ~~section 4(c)~~ **section 4(d)** of this chapter. The person may waive ~~his~~ **the** right to the hearing.

~~(c)~~ **(d)** Any part of the credit time of which a person is deprived under this section may be restored.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 124, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 10.

Page 1, line 13, delete "or on home detention".

Page 1, line 15, delete "imprisoned for a crime or imprisoned awaiting trial".

Page 1, line 16, delete "or sentencing".

Page 2, line 12, delete "not" and insert "**only**".

Page 2, line 12, delete "reassigned" and insert "**assigned**".

Page 2, line 12, delete "or Class III." and insert ".".

Page 2, line 40, delete "A" and insert "**Except as provided in subsection (c), a**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 124 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 9, Nays 0.

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